IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 109 of 2004

Date of Decision: 24th August, 2007.

Bhoomi Singh & ors … Appellants

Versus

United India Insurance Co & anr. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the appellant (s) : Mr. Deepak Siingh Rana, Advocate Vice Mr. Jagdish Thakur, Advocate.

For the Respondent(s) : Mr. Sanjeev Kuthiala, Advocate for Respondent No.1.

Mr. Dinesh Thakur, Advocate vice Mr. Anoop Rattan, Advocate.

Deepak Gupta, J. (Oral).

This appeal under Section 173 of the Motor Vehicles Act is directed against the award dated 3.1.2004 passed by the Motor Accident Claims Tribunal, Hamirpur in MAC Petition No. 67 of 2001 whereby he dismissed the claim petition filed by the claimants.

The claimants are the widow, son and daughter of deceased Sita Ram. Sita Ram died in an accident of truck No.HP22-8401 which was admittedly owned by him. It was alleged that Sita Ram was traveling in the truck as owner of the goods in addition to being owner of the vehicle. The learned Tribunal

rejected the petition on the ground that Sita Ram was the owner of the truck and the 'insured' under the terms of the policy and as such the Insurance Company could not be directed to pay compensation in respect of death of the insured person.

This award is under challenge before this Court. The question, whether the Insurance Company is liable to pay compensation to the insured is no longer res integra. This Court dealt with this matter in detail in **United India Insurance Company Ltd** versus **Smt. Chander Prabha Bhatt and others,** Latest HLJ 2005 HP 87, wherein this Court held as follows:-

> "13. What is the purpose of an insurance policy which is compulsorily required under the Motor Vehicles Act? The purpose clearly is that if any third party suffers damage due to an accident with a vehicle, it should be able to claim compensation from the Insurance Company. The intention of the legislature was that the injured party might find it very difficult to cover the amounts from the owner of the vehicle and, therefore, insurance was made compulsory so that the claimants could get their claims from the Companies. However, the Act does not require that the policy necessarily cover risk to the owner himself. Some policies which in common parlance are termed as comprehensive policies cover various types of risk including own damage to the vehicle. In that event extra premium is to be paid and it is by way of a mutual contract between the Insurance Company and the owner that such risk is covered. In the present case no clause has been pointed out in the policy. Ext. RX which shows that the Insurance Company had undertaken to cover the risk in case of death or injury to the owner.

14. Another important question which arises is can an Insurance policy which is basically meant for covering risk to third parties be required to cover the loss to the owner himself. The owner in the present case has died. Supposing he was the injured, could he have filed a claim petition against himself? Obviously not. A person cannot be both the plaintiff and the defendant. The Insurance Company is to indemnify the owner for damages which he is livable to pay. Therefore, it is quite obvious that the insured or his legal heirs cannot file a petition against the insurance company directly. There must be first and award against the insured and only then the Insurance Company is liable. This is obvious from the scheme of the act and especially Section 149 of the Act which provides that the Insurance Company has to satisfy judgments passed against the insured."

In fact this controversy has been set at rest by a decision of the Apex Court in **Dhanraj** versus **New India Assurance Co. Ltd. and anr**. (2004) 8 SCC 553, where the apex Court held as follows:-

"8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle."

Similar view has been taken in **New India Assurance Co. Ltd.** versus **Meera Bai and others,** (2006) 9 SCC 174.

In view of the aforesaid law laid down by the Apex Court as well as this Court, there is no merit in this appeal which is accordingly dismissed.

August 24, 2007. (Deepak Gupta), J.

s.